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No. 659

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

JOHN SANTANGELO, *Petitioner*

vs.

DOMENICA ERCOLANI SANTANGELO, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

WILLIAM L. HADDEN,
Counsel for Petitioner

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

Petitioner prays that writ of certiorari issue to review the judgments of the Supreme Court of Errors of the State of Connecticut, entered in the case of *Domenica Ercolani Santangelo* v. *John Santangelo,* and in the consolidated companion case, *Domenica Ercolani Santangelo* v. *Giovanni Santangelo, a.k.a. John Santangelo,* on January 9, 1951.

OPINIONS BELOW

The memorandum of opinion of the Superior Court (R. 19) is unreported. The opinion of the Supreme Court of Errors of the State of Connecticut (R. 66) is reported in 137 Conn. 404, 78 Atl. (2d) 245.

JURISDICTION

The judgment of the Supreme Court of Errors of the State of Connecticut was entered on January 9, 1951 (R. 70, 71). That Court is the highest State Court in which a decision could be had. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257 (3).

The question whether the respondent, a non-resident alien, could attack collaterally, in the Superior Court of Connecticut, the validity of a Nevada divorce was first raised by the petitioner in the Superior Court by a Plea to the Jurisdiction (R. 12) to which there was a demurrer, sustained by the trial court. (R. 14.)

The same claim of law respecting the judgment to be rendered was made prior to judgment in the Superior Court (R. 51), and the ruling thereon was assigned as error (Assignment 7, R. 53) in the appeal to the Supreme Court of Errors. A claim of laches was made before judgment in the trial court (R. 28) and assigned as error in petitioner's appeal. (R. 52.) The Connecticut Supreme Court held (R. 67-68) that a non-resident alien could collaterally attack, in Connecticut, a Nevada decree, despite the Full Faith and Credit Clause of the Federal Constitution, and despite the lapse of time. (R. 68.)

QUESTION PRESENTED

Does the Full Faith and Credit Clause of the United States Constitution permit a non-resident alien to attack collaterally a Nevada divorce decree in a Connecticut Court, after a lapse of more than ten years, when such an action, if successful, would destroy the legitimacy of birth of three innocent United States citizens?

CONSTITUTIONAL CLAUSE AND STATUTE INVOLVED

Full Faith and Credit Clause, United States Constitution, Article 4, Section 1.

Act of June 25, 1948, C. 646, 62 Stat. 947, 28 U. S. C. Sec. 1738.

STATEMENT

The petitioner and the respondent, both then citizens of Italy, intermarried, at the place of their residence, San Valentino, Italy, on December 27, 1920. About two years later the petitioner left Italy for Argentina, stating that he would later send for his wife. (R. 35.)

After leaving the Argentine he came to the United States in April of 1924. In January 1932 he was admitted to citizenship in the Supreme Court of New York at Yonkers. At about this time he moved to Stamford, Connecticut. (R. 36.)

On April 23, 1935 the petitioner started a divorce action in the Superior Court, Fairfield County, Connecticut, on the ground of adultery. The complaint in that action was personally served on the respondent but she never appeared or answered. That action was abandoned, and in July 1936 the defendant went to Reno, Nevada, arriving there on the night of July 20, 1936. (R. 39-40.) On September 2, 1936, six weeks and three days after his arrival in Reno, the petitioner started a divorce action against the respondent in the Second Judicial District Court of Nevada at Reno in and for the County of Washoe. (R. 41.)

The petitioner obtained an order of notice from the Nevada Court and on September 22, 1936, personal service was made on the respondent in Italy. She thus had actual notice and, as far as time was concerned, an opportunity to appear and defend. No appearance was entered for the defendant in that case and

there was no contest. On October 23, 1936, a decree of divorce was granted by the Nevada Court. (R. 43.)

On January 2, 1937, the petitioner and Carrie Altorelli were married at Harrison, New York and they have since that date, lived together in Connecticut as husband and wife. Their oldest child, Charles, had been born on July 18, 1935. On January 12, 1938, they had a second child, Elsie, and on October 3, 1942, a third child, John. (R. 39, 44-45.)

The respondent brought an action for support against the petitioner on September 20, 1945 in the Superior Court, New Haven County, Connecticut. (R. 2-4.) On August 12, 1948, she instituted a divorce action in the same court. (R. 54-55.) The two cases were consolidated and tried together. (R. 35) The Superior Court of Connecticut held that the Nevada decree was not entitled to Full Faith and Credit in Connecticut because the petitioner had not intended to make Nevada his home nor did he intend to establish his domicile there. (R. 48.) The Superior Court gave judgment for the plaintiff (respondent here) in both cases. (R. 31-32, 61-63.)

The petitioner appealed to the Supreme Court of Errors of the State of Connecticut in both cases. (R. 32, 63.) The appeals were consolidated and there is one record (R. 34, 64) and one memorandum of decision of the court below. (R. 66.)

The court below held that there was no error in either case on the ground that the petitioner had not established a domicile in Nevada nor abandoned his Connecticut domicile and therefore the Nevada Court lacked jurisdiction. (R. 67.) The Connecticut Supreme Court further held that an alien non-resident had the same right as a Connecticut resident to attack collaterally the validity of a judgment in another state on the ground that the Court had no jurisdiction. (R. 68.)

REASONS FOR GRANTING THE WRIT

I

The decision of the Connecticut Supreme Court of Errors is in conflict with the decisions of this Court requiring state courts to give "judgments within the jurisdiction of the rendering state the same faith and credit sister states as they have in the state of the original forum. The faith and credit given is not to be niggardly but generous, full. Local policy must at times be required to give way, such is part of the price of our federal system." *Johnson* v. *Muelberger,* U. S. March 12, 1951; *Sherrer* v. *Sherrer,* 334 U.S. 343; 355; *Williams* v. *North Carolina,* (1942) 317 U. S. 287, 301, 303; *Davis* v. *Davis,* 305 U. S. 32, 40.

The Court below cites, as its authority for denying full faith and credit to the Nevada decree, *Williams* v. *North Carolina,* (1945) 325 U. S. 226. However, that case does not say that a state court may, so to speak, seize upon an opportunity to examine the jurisdictional facts involved in a judgment of another state. On the contrary, Mr. Justice Frankfurter, writing for the majority in the *Williams II* case said, "as to the truth or existence of a fact, like that of domicile, upon which depends the power to exert judicial authority, a State not a party to the exertion of such judicial authority in another state but *seriously affected* by it has a right, when asserting its own unquestioned authority, to ascertain the truth or existence of the crucial fact." 230. (Italics added.)

The opinion goes on to say, 232, "[T]o endow each state with controlling authority to nullify the power of a sister State to grant a divorce based upon a finding that one spouse had acquired a new domicile within the divorcing state would, in the proper functioning of our Federal system, be . . . indefensible."

The only basis that has ever been asserted to give one state the power to invalidate a judgment of a sister state is the right

of a state to deal with the legal relations of its own citizens in which it has an interest, and to enforce its own public policy in matters that concern it. See dissenting opinions of Mr. Justice Murphy, 317 U. S. 310, Mr. Justice Jackson, 317 U. S. 313, 319, Mr. Justice Frankfurter, 334 U. S. 351, 352. Also, *Andrews* v. *Andrews,* 188 U. S. 14; *Fall* v. *Easton,* 215 U. S. 1; *Alaska Packers Assoc.* v. *Industrial Acc. Comm.,* 294 U. S. 532; *Rice* v. *Rice,* 336 U. S. 674.

In the present case the respondent is not a citizen of Connecticut nor of the United States. (R. 2, 35.) The petitioner and the respondent have never lived in Connecticut nor in the United States as man and wife. (R. 35-36.) The State of Connecticut is not here seeking to enforce its criminal laws as was North Carolina in *Williams I,* and *Williams II, supra.* The State of Connecticut, by its mandate in this case has in no way preserved marital relations its policy declared binding; it has not protected rights of its citizens, nor saved its public from a public charge. On the contrary the judgments the petitioner asks this court to review have destroyed the marriage (R. 44) of citizens of the United States, which full faith and credit would have preserved, and made bastards of three innocent citizens whose status would have been protected by a proper obedience to the Constitution of the United States. (R. 39, 45.) All this to end a marriage already ended by a sister state more than ten years earlier. (R. 43, 61-63.)

II

This case involves important issues in the adjustment of the domestic-relations laws of the several states, the clarifying of which this Court has recognized as of grave necessity in a long line of decisions ending with *Johnson* v. *Muelberger, supra,* and including *Williams* v. *North Carolina I and II.* For cases since the *Williams* cases and up to 1948 see *Annotation, "Recognition*

as to marital status of foreign divorce decree attacked on ground of lack of domicil, since Williams decision." 1 A.L.R. (2d) 1385.

That the desired result of settled rules has not yet been accomplished is illustrated by the dissenting opinions in *Williams* v. *North Carolina, I and II, supra; Sherrer* v. *Sherrer, supra; Rice* v. *Rice, supra; Coe* v. *Coe,* 334 U. S. 378, and *Estin* v. *Estin,* 334 U. S. 541. The petitioner submits that the present case is representative of a class of cases in the category of *Johnson* v. *Muelberger, supra, Sherrer* v. *Sherrer, supra,* and *Coe* v. *Coe, supra,* marked by a tendency of state Courts to enlarge the field of cases in which one state may scrutinize jurisdictional facts and invalidate, for its own purpose, judgments of sister states. Alien plaintiffs may not appear frequently in our courts with similar claims, but non-residents will, and, as Mr. Justice Rutledge said in his dissent in *Williams* v. *North Carolina, II, supra,* at page 252:

> "It cannot be assumed that the matter will affect only a few. For this has become a nation of transient people. Lawyers everywhere advise for or against divorce and courts grant or deny it, depending not on the probability that the case will come here, but on what is done here with the few cases which do come."

See also, 37 Am. Bar Assoc. Journal 107, (Feb. 1951).

III

> "It can no longer be said that public policy requires non recognition of all irregular foreign divorces. We have recognized that the interest of the state in many situations may be with recogintion of such divorces and preservation of remarriages rather than a dubious attempt to resurrect the original. From a pragmatic viewpoint judicial invalidation of irregular foreign divorces and attendant remarriages, years after both events, is a less than ineffective sanction against an institution whose charm lies in its immediate respectability."

Goodloe v. *Hawks,* 113 F. (2d) 753.

The correct policy of the State of Connecticut in the present case is not to permit a non-resident alien to invalidate the Nevada decree and consequently bastardize the children of the second marriage, but rather to refuse to permit such a non-resident alien to bring such a suit in Connecticut. See *Gildersleeve* v. *Gildersleeve*, 88 Conn. 689, 698.

Here the contest was between an alien and a citizen. At stake was the legitimacy of three innocent citizens. Had the Connecticut court given to the decree of a sister state that full faith and credit required by the Constitution and the decisions of this Court, it would have left it to the alien to make her attack, on a judgment of a Nevada Court, in Nevada. The State of New York has reached results in accord with Constitutional Full Faith and Credit in similar situations where it has held that only to protect its own citizens would it apply its principle of non recognition of foreign divorces granted on grounds not recognized in New York. *Hubbard* v. *Hubbard*, 228 N. Y. 81, 126 N.E. 508; *Ball* v. *Cross*, 231 N.Y. 329, 132 N.E. 106; *Powell* v. *Powell*, 211 App. Div. 750, 208 N.Y.S. 153. See also *Curley* v. *Curley*, 120 F. (2d) 730.

> "Any person may be precluded from questioning the validity of a divorce decree if under all of the circumstances his conduct has . . . for any . . . reason been such as to make it inequitable to permit him to deny the validity of the divorce decree."
>
> Restatement of Law, 148 Supplement, Sec. 112 C.

The court below dealt with the claim of laches by saying that if the second spouse of a divorced person is not innocent, she or he is not entitled to much consideration in equity. (R. 69.) The memorandum of decision does not so much as mention the existence of three unquestionably innocent children. The destruction of the legitimacy of these children gives rise to a proper claim of laches, *Mills* v. *Mills*, 119 Conn. 612, 621. The State of Connecticut has an interest in the status of these minor children.

Connecticut clearly holds that when such a question of public policy is involved the rights as between the parties are subservient to the interest of the state. *Beit* v. *Beit,* 135 Conn. 195, 200.

The Reno divorce was over ten years old when the respondent first sought to upset it (R. 68) and the doctrine of laches should have been applied by the Court below. *Dry* v. *Rice,* 147 Va. 331, 137 S.E. 472; *Swift* v. *Swift,* 239 Iowa 62, 29 N.W. (2d) 535. Even more force is added to this claim when it is realized that the only thing gained by the plaintiff in the proceedings below was money. She had already been divorced by the judgment of the Nevada Court. There is nothing in the record to indicate that the Connecticut decree is of any more force in the place of the respondent's domicile than was the Nevada decree. Her action should have been barred in Connecticut by lapse of time. *Hooker* v. *Hooker,* 130 Conn. 41, 51; *Bussey* v. *Bussey,* 95 N.H. 349, 64 A (2d) 4; *Gioia* v. *Gioia,* 245 App. Div. 373, 282 N.Y.S. 852.

CONCLUSION

For the foregoing reasons this petition for writ of certiorari should be granted.

March 30, 1951.

Respectfully submitted,
WILLIAM L. HADDEN,
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vs.

DOMENICA ERCOLANI SANTANGELO, *Respondent*

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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NO. 659

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DOMENICA ERCOLANI SANTANGELO, *Respondent*

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The unreported memorandum of decision of the Superior Court on the respondent's (wife) demurrer to the petitioner's (husband) plea to the jurisdiction (R. 14); the unreported memorandum of decision of the Superior Court (R. 19); the unreported judgment of the Superior Court in each case (R. 31 and R. 61); the opinion of the Supreme Court of Errors of the State of Connecticut (R. 66) reported in 137 Conn. 404, 78 A 2d 245, (decided, Jan. 9, 1951).

JURISDICTION

The judgment of the Supreme Court of Errors of the State of Connecticut was entered on January 9, 1951 (R. 70, 71). The jurisdiction of this Court is invoked under 28 U. S. C. Section 1257 (3).

QUESTIONS PRESENTED

The petitioner has presented a single question which in fact embodies the question of (a) the collateral attack made by the alien respondent, in the Connecticut court, upon the Nevada decree of the petitioner (b) the alleged laches of the respondent in challenging the Nevada decree and (c) the effect of this decision upon the three children of the petitioner.

STATEMENT

The respondent wife, Domenica Ercolani Santangelo, and the petitioner husband, John Santangelo, were married in Italy in 1920 and continued to live there together until 1922. In 1922 the petitioner left Italy for America, telling respondent that he would send for her when he had established himself. The petitioner then went to Argentina, Chile, Panama and Boston. After living with his brother in Norwalk, Connecticut, for a short period, he lived in Yonkers, New York and worked there in the building trade until 1931. In April of 1932 he established his home in Stamford, Connecticut. Between 1922 and 1932 he supported the respondent by sending her part of his earnings. During all of this time they corresponded with each other. In 1932 he received his citizenship papers and petitioned the United States State Department for an immigration visa for the respondent, but she was never informed of this. He sent her neither money nor steamship tickets for her passage. She continued to write to him until 1935, always expressing a desire to come to the United States. He answered no letters after May, 1932. In 1931 the petitioner met Carrie Altorelli and thereafter became intimate with her. She assisted him in his song publishing business in Stamford. *On July 18, 1935 Charles was born to them.* On April 23, 1935, *three months before the birth of Charles,* the petitioner started an action for divorce against the respondent in Fairfield County, Connecticut, (on the grounds of adultery). This action was

abandoned by John Santangelo on June 4, 1937. In July of 1936 the petitioner and Carrie Altorelli *left together for Reno,* arriving there on July 20, 1936. He did not discontinue his song publishing business in Stamford, Connecticut, nor did he close out either of his bank accounts in Stamford and White Plains. From July 20, 1936 until some time in November, 1936 the petitioner lived in Reno, either at a tourist home on the outskirts of Reno or at a hotel in Reno and while there conducted his business from a room adjoining the tourist home. During all of the time that he remained in Reno he made no arrangements regarding the forwarding of his mail. He did not establish any credit accounts in stores; joined no social, political or religious organizations; he did not bring to Reno, nor did he buy any furniture or household goods. On September 2, 1936, *exactly 45 days after arrival in Reno,* he started his action for divorce against the respondent. The respondent was served in San Valentino, Italy on September 22, 1936. On October 23rd the petitioner appeared in the Reno court and obtained a decree of divorce on the grounds that the respondent was guilty of extreme cruelty, and of living apart from her husband without cohabitation for more than five years. All the while, the petitioner's action for divorce against the respondent was pending in the Superior Court in Fairfield County. The respondent did not appear in the Reno proceedings. Upon leaving Reno in November of 1936, the petitioner and Carrie Altorelli proceeded to Harrison, New York and were there purportedly married on January 2, 1937, and ever since they have lived together in Connecticut. On January 12, 1938 a daughter Elsie and on October 3, 1942 a son John was born to the petitioner and to Carrie Altorelli.

On September 20, 1945 the respondent, while residing in San Valentino, Italy, instituted her action in Connecticut against her husband for non-support. On May 21, 1948 the respondent arrived in this country under a temporary visa duly issued to her by the United States Department of Immigration, and on August

12, 1948 she instituted her action for a divorce and for alimony against the petitioner.

These facts were not contradicted. The petitioner offered no evidence whatsoever bearing on his questioned Nevada domicil. The opinion of the Connecticut Supreme Court (R. 66) recited that "The finding is not attacked;" that "The plaintiff's evidence warranted the Court's Conclusion," and that "The defendant offered no evidence to controvert it." (R. 66, 67.)

CONSTITUTIONAL CLAUSE INVOLVED

Full Faith and Credit Clause, United States Constitution, Article IV, Section I.

ARGUMENT

Application of Full Faith and Credit Clause to Migratory Divorces

The State of Connecticut, by virtue of Article IV, Section 1 of the Constitution of the United States, is required to give "Full Faith and Credit" . . . "to judicial Proceedings of every other State." The decision of the Connecticut Supreme Court in this case is squarely in line with the decisions of this Court in matters pertaining to migratory divorces. *Williams* vs. *No. Carolina* (I) 317 U. S. 287; *Williams* vs. *No. Carolina* (II) 325 U. S. 226; *Davis* vs. *Davis*, 305 U. S. 32; *Sherrer* vs. *Sherrer*, 334 U. S. 343; *Coe* vs. *Coe*, 334 U. S. 378; *Rice* vs. *Rice*, 336 U. S. 674; *Esenwein* vs. *Penn.*, 325 U. S. 279, 281; *Johnson* vs. *Muelberger*, U. S., Sup. Ct., decided March 12, 1951. The *Williams case (II)*, supra at 229, stated that "A judgment in one State is conclusive upon the merits in every other State, but only if the Courts of the first State had power to pass on the merits—had jurisdiction, that is, to render the judgment."

On March 12, 1951, this Court stated that:

(a). "It leaves each State with power over its own courts but binds litigants, wherever they may be in the Nation, by prior orders of other courts with *jurisdiction*," (italics ours).

(b). "We believe that the decision of this Court in the Davis case and those in related situations are clearly indicative of the result to be reached here. Those cases stand for the proposition that the requirements of full faith and credit bar a defendant from collaterally attacking a divorce decree on jurisdictional grounds in the courts of a sister State where there has been *participation by the defendant in the divorce proceedings*, where *the defendant has been accorded full opportunity to contest the jurisdictional issues*, and where *the decree is not susceptible to such collateral attack in the Courts of the State which rendered the decree*." (Italics ours.) Citing: *Coe* v. *Coe*, 334, U. S. 378; cf. *Estin* v. *Estin*, 334 U. S. 541.

(c). "It is clear from the foregoing that, under our decisions, a state by virtue of the clause must give full faith and credit to an out-of-state divorce by barring either party to that divorce, who has been personally served or who has entered a personal appearance, from collaterally attacking the decree."

Johnson v. *Muelberger*, U. S. Supreme Court, October Term 1950, decided March 12, 1951.

In *Rice* vs. *Rice*, 336 U. S. 674, at 675, this Court held that "Our statement in the *Esenwein* opinion, 325 U. S. at 281, that 'It is not for us to retry the facts, and we cannot say that in reaching their conclusion the (Connecticut) courts did not have warrant in evidence and did not fairly weigh the facts,' is appropriate here." The instant case involves the validity in Connecticut of a Reno decree obtained in an ex-parte proceeding wherein the respondent (wife) did not appear in person or by attorney. The Connecticut courts have found that at the time of the Nevada decree (1936) Nevada was not the bona fide domicile of either party; that the

burden of proving this was upon the respondent wife and that she sustained that burden in accordance with the standards laid down by this Court in the Rice case, Supra. This is the extent of the Full Faith and Credit clause, and since the Nevada decree was not based upon proper jurisdiction of the parties by the Nevada Court, there is no substantial Federal question involved in the petitioner's appeal to this Court. The Reno decree involved in the instant case was in fact outside of the protection of the Full Faith and Credit clause and it became solely a question for the Connecticut Courts to determine the effect to properly be given to the Reno decree in the Connecticut Courts. *Williams* vs. *No. Carolina* (II) Supra; *Glaser* vs. *Glaser,* 276 N. Y. 296; 12 N. E. 2d 305; *Hellmuth* vs. *Hellmuth,* 98 Fed. 2d 431; *Atkinson* vs. *Atkinson,* 82 Fed. 2d 847; *Rice* vs. *Rice,* Supra, 134 Conn. 440, 445.

The Alien Status of Respondent

Petitioner would have this Court instruct Connecticut to deny to the respondent the right to sue in the Connecticut courts because she is an admitted alien. The lower court, in passing on this question, stated that Connecticut courts are open to "every person" (R. 68). *Mings* v. *People ex rel. McCune,* 111 Ill. 98, 100; *Artman* v. *Artman,* 111 Conn. 124, 126, 149 A. 246; see *Riggs* v. *Riggs,* 91 Kan. 593, 595, 138 P. 628; *2 Beale, Conflict of Laws* § *454.1* et seq. The Connecticut Constitution uses the precise words "every person." *Conn. Const., Article First, Sec. 12**; *Paquin, Ltd.* v. *Westervelt,* 93 Conn. 513, 516, 106 A. 766; *Janusis* v. *Long,* 284 Mass. 403, 405, 188 N. E. 228; *Sliosberg* v. *New York Life Ins. Co.,* 244 N. Y. 482, 491, 155, N. E. 749.

The public policy of the United States is to the same effect. "The doors of our Courts have not been shut to peaceable law-abiding aliens seeking to enforce rights growing out of legal occupations." *Ex Parte Kawato,* 317 U. S., 69, 78 (Black, J.).

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*Appendix B

Civil Rights Act 8 U. S. C., Sec. 41; *Roberts* v. *Hartford Fire Insurance Co.*, 177 Fed (2d) 811, 814.

Judge Crane, in *Dean* vs. *Dean*, 241 N. Y. 240, 149 N. E. 844 states that "The policy of the State of New York, I venture to assert, is in the maintenance of marriage and morality. These will be aided by affording the wife relief in our courts, rather than by turning her out, when we know she can get help nowhere else. I know of no authority which holds that the general policy of this state limits its aid to its own citizens." *Dean* vs. *Dean*, supra, 242; see also opinion of Cardoza, J., in same case.

The specific New York cases, cited by the petitioner, are distinguishable in that they represent the public policy applied by the State of New York to certain restricted situations. *Dean* vs. *Dean*, supra; see also *Melvin* vs. *Melvin*, 129 Fed. (2d) 39 (Rutledge, J.).

The respondent complied with the jurisdictional requirements of the State of Connecticut in bringing these actions. *General Statutes of Conn. (Rev. of 1949) Secs. 7327, 7334.**

The lower court stated that "unless the plaintiff has this right she is remediless" (R. 67).

"The courts have generally accorded to alien friends the same privileges of suit that they have extended to citizens or subjects of the forum." *2 Am. Juris., Aliens, Sec. 59, P. 494.* ". . . The court may not deny the right of an alien to sue unless restrained by legislative fiat." *3 C.J.S., Aliens, Sec. 9 (2), P. 534.* "Presence within the jurisdiction is not essential to the exercise of such privilege, but it is extended to a foreigner not within our borders." *Janusis* vs. *Long*, Supra 405; *Peabody* vs. *Hamilton*, 106 Mass. 217, 220; *State* vs. *Sinchuk*, 96 Conn. 605, 624: 115 A. 33.

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*Appendix A

To contend that the respondent can institute an action for non-support and divorce, as has been conceded by the petitioner but that in so doing she may not attack the Nevada decree, in effect gives her a mere fictitious right to litigate her causes of action under such limitations, restrictions and qualifications as will preclude her from properly presenting any evidence pertaining to the issues in dispute. *Sherman* vs. *F.S.A.*, 166 Fed. (2d) 451, 455.

The Claim of Laches

The petitioner urges upon this Court the view that "laches" presents a basis for review by this Court of the Connecticut judgments. The trial court concluded that "One child had already been born to this couple prior to the rendition of the Reno decree. It hardly lies in such a man's mouth to charge the plaintiff wife with laches for not preventing him from proceeding to raise a family with another woman while married to the plaintiff." (R. 28.) The existence of laches as a defense was a question of fact for the trial court. The trial court gave no credence whatsoever to such a defense. The Connecticut Supreme Court did not disturb the finding of the trial court (R. 66). See 12 A.L.R. (2d) 153, 155 (R. 69). ". . . certainly the application of laches and the statute of limitations does not present a Federal question." *Wood* v. *Chesborough*, 228 U. S. 672, 677. No principle of equity, justice or public policy can be found which would lend merit to the defense of laches on the part of one guilty of the conduct of the petitioner in this case.

The Three Children of Petitioner and of Carrie Altorelli

Certainly Carrie Altorelli is entitled to no consideration. The eldest child, Charles, was born on July 18, 1935, *one year prior* to the date when petitioner and Carrie Altorelli went to Reno. The second child, Elsie, was born on January 12, 1938, one year after the marriage of petitioner and Carrie Altorelli in January of

1937, and the third child, John, was born on October 3, 1942. The obvious policy of the Connecticut Courts is to protect and sustain the admittedly valid first marriage between petitioner and respondent in Italy in 1920. The risks undertaken by petitioner and Carrie were both deliberate and calculated. Petitioner in his brief seeks to impose upon this Court a purely sympathetic argument regarding the children. It has no place in the determination of the judicial issues presented here. The intermarriage of Carrie Altorelli and John Santangelo after the conclusion of this litigation will give legitimacy and equal inheritance rights to their three children in accordance with the Connecticut Statute law. *General Statutes of Connecticut, Revision of 1949, Sec. 7058.** "If there are any complications growing out of the husband's remarriage, he has brought them upon himself and has not the law to blame." *Dean* vs. *Dean,* Supra, at page 242. The only marital status involved in these instant proceedings is that of the respondent's marriage to the petitioner and she has sought protection and rights consistent with due process of law.

CONCLUSION

We submit that this is not a proper case for review by the Supreme Court of the United States. The judgments reached by the Connecticut courts are just, correct and in accordance with authority.

The Petition for Writ of Certiorari should be denied.

April 23, 1951.

Respectfully submitted,

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*Appendix A

APPENDIX A

Applicable Portions of the General Statutes of Connecticut, Revision of 1949

Sec. 7327. Divorces, when granted. "The superior court shall have exclusive jurisdiction of all complaints for divorce, . . ."

Sec. 7334. What residence necessary to give jurisdiction. "If the planitiff shall not have continuously resided in this state three years next before the date of the complaint, it shall be dismissed unless the cause of divorce shall have arisen subsequently to the removal into this state, *or unless the defendant shall have continuously resided in this state three years next before the date of the complaint and actual service shall have been made upon him,* . . ." (Italics ours.)

Sec. 7058. Order of distribution. "After distribution shall have been made to the husband or wife of the intestate of such portion or share of the estate of the intestate as such husband or wife is entitled to by law, all the residue of the real and personal estate shall be distributed in equal proportions, according to its value at the time of distribution, among the children and the legal representatives of any of them who may be dead, except . . . *Children born before marriage whose parents afterwards intermarry shall be deemed legitimate* and inherit equally with other children." (Italics ours.)

APPENDIX B

Applicable Provision of the Connecticut Constitution

Article First, Section 12. (Declaration of Rights.) "All courts shall be open, and every person, for an injury done him in his person, property or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay."

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